

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MATTHEW ROTH, derivatively on behalf :
of METAL MANAGEMENT, INC., :

Plaintiff, : (PRO SE)
:
-against- : 03 Civ. 7760 (DAB) (THK)
:
T. BENJAMIN JENNINGS, et al., : REPORT AND RECOMMENDATION
:
Defendants. :
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FROM: THEODORE H. KATZ, UNITED STATES MAGISTRATE JUDGE.

TO: HON. DEBORAH A. BATTS, UNITED STATES DISTRICT JUDGE

This action was referred to this Court for general pretrial supervision. By letter-directive dated November 19, 2007, the parties were directed to attend a pretrial conference on January 8, 2008. Plaintiff appeared at the conference, but Defendant T. Benjamin Jennings did not. Jennings did not seek to adjourn the conference, nor did he otherwise communicate with the Court in any fashion prior to the conference. (Jennings had been represented by counsel earlier in the litigation, but his attorney's motion to withdraw from representation was granted on October 18, 2007.) Moreover, Plaintiff's counsel has informed the Court that Jennings has not responded to correspondence related to his discovery obligations, or to telephone calls. Finally, Jennings did not appear for his deposition on the noticed date.

Accordingly, on January 8, 2008, this Court issued an Order requiring Jennings to show cause in a sworn affidavit, by no later

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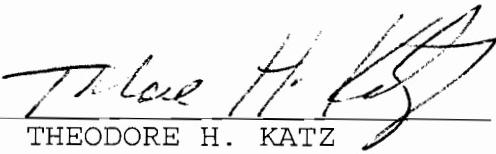
than January 25, 2008, why a default judgment should not be entered against him pursuant to Rules 16(f) and 37(b)(2)(C) of the Federal Rules of Civil Procedure. The Order stated explicitly that failure to comply would result in the entry of a default judgment against Defendant Jennings.

Defendant Jennings has submitted no response to the Court's Order, thus signifying that he does not intend to participate in this litigation and to comply with Court Orders. Because Jennings failed to appear at the Court's scheduling conference, and has failed to respond in any way to Plaintiff's communications regarding discovery, as well as this Court's Order to Show Cause, the Court respectfully recommends that a default judgment be entered against Defendant Jennings, pursuant to Rules 16(f) and 37(b)(2)(C) of the Federal Rules of Civil Procedure.

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten days from service of this Report to file written objections. See also Fed. R. Civ. P. 6(a) and (e). Such objections shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Honorable Deborah A. Batts, U.S.D.J., and to the chambers of the undersigned, Room 1660. Any requests for an extension of time for filing objections must be directed to Judge Batts. Failure to file objections will result in a waiver of those objections for purposes of appeal. See Mario v. P & C Food Mkts., Inc., 313 F.3d

758, 766 (2d Cir. 2002); Spence v. Superintendent, 219 F.3d 162, 174 (2d Cir. 2000); Small v. Sec'y of Health and Human Servs., 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

Respectfully submitted,



THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE

Dated: February 14, 2008
New York, New York